



STATE OF INDIANA

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April 13, 2009

Donald Weber
Weber, Dickey & Bellman
813 Broadway Street, First Floor
Cincinnati, Ohio 45202

Re: Informal inquiry 09-INF-12 regarding the City of Lawrenceburg

Dear Mr. Weber:

This advisory opinion is in response to your informal inquiry dated March 6, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write to inquire about a request for access to records you submitted to the City of Lawrenceburg. Your inquiry is whether the City denied you access to records. You submitted an electronic mail message to my office on February 24, 2009, inquiring whether the City had denied you access to records. My office responded on February 25, indicating the City had denied you access to records if the City did not respond to your request within seven days of receipt. You contend my office did not respond to your February 24 inquiry. For your reference, I am enclosing a copy of the February 25 response to you.

The public policy of the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you contend you submitted a request to the City on January 15, 2009, and the City did not respond. Jackie Stutz, Clerk-Treasurer for the City, responded to the allegation by letter dated March 16. Ms. Stutz contends that after she received your request, she called the City Attorney who told her to “hold off” on the request because of a potential settlement. She indicates she forgot to inform you of this but contends that you did not call her again to remind her of the request.

The City was required by the APRA to respond to the request within seven days of receipt. *See* I.C. § 5-14-3-9(b). In not doing so, the City denied you access to public records. Nothing in the APRA requires the requestor to follow up with an agency when the requestor has not received a response. The onus is on the agency to respond within the specified timeframe and not on the requestor to continue asking for access to the records. In my opinion, the City violated the APRA by failing to respond to your request for access to records.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jackie Stutz, Clerk-Treasurer, City of Lawrenceburg